

No. 7819

In the United States Circuit Court of
Appeals for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

MRS. ALICE H. ELDRIDGE, RESPONDENT

ON PETITION FOR REVIEW OF DECISION OF THE UNITED
STATES BOARD OF TAX APPEALS

BRIEF FOR THE PETITIONER

FRANK J. WIDEMAN,
Assistant Attorney General.

SEWALL KEY,
LUCIUS A. BUCK,
Special Assistants to the Attorney General.

FILED

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PAUL P. BERRIEN,
Clerk



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OPINION BELOW

The only previous opinion in this case is that of the United States Board of Tax Appeals (R. 12-21) which is reported in 30 B. T. A. 1322.

JURISDICTION

The case involves a deficiency in income tax for the calendar year 1929 (R. 4). The Commissioner of Internal Revenue determined a deficiency in the amount of \$2,124.13 (R. 7). The Board redetermined the deficiency in the amount of \$70 (R. 22). This appeal is taken from a decision of the Board of Tax Appeals promulgated September

28, 1934 (R. 22), and is brought to this Court by a petition for review filed December 4, 1934 (R. 22-29), pursuant to the provisions of the Revenue Act of 1926, Sections 1001-1003, c. 27, 44 Stat. 9, 109-110, as amended by the Revenue Act of 1932; Section 1101, c. 209, 47 Stat. 169.

QUESTION PRESENTED

The taxpayer's husband owned and controlled corporation B but by reason of the community property laws of the State of Washington the taxpayer was interested therein to the extent of one-half of the capital stock of corporation B. At the end of the tax year, for the purpose of establishing a deductible loss, taxpayer's husband transferred certain stock (owned by the marital community) to corporation B. The only consideration for the transfer was a credit in the amount of the market value of the stock on the books of B, the credit being made to taxpayer's husband. Corporation B was the agency or instrumentality through which the taxpayer's husband handled his personal account. Was the transfer sufficient to justify the claimed deduction from gross income under Section 23 (e) (2) of the Revenue Act of 1926?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix of the brief in the case of *Commissioner v. A. S. Eldridge*, Case No. 7818, now pending in this Court.

SPECIFICATION OF ERRORS TO BE URGED

The Board of Tax Appeals erred in not finding and holding that the transfer of the corporate stock by the taxpayer's husband to his corporation was insufficient to justify the deduction of the amount of the claimed loss from the taxpayer's gross income for the calendar year 1929. In connection with and as a part of this specification of errors, the assignments of error contained in the petition for review (R. 26-28) are hereby included herein as fully and completely as if again set forth at this point *in haec verba*.

STATEMENT AND ARGUMENT

This case and the case of A. S. Eldridge, above referred to, were heard together by the Board of Tax Appeals. The findings of fact cover both cases (R. 13-17). The statement of evidence set forth in the record in the A. S. Eldridge case applies equally to this case (R. 31). The parties hereto have stipulated that that statement of evidence may be deemed to be incorporated in the record in this case (R. 31-32).

The parties hereto have stipulated that the decision in this case "shall abide and be governed by the decision and proceedings in the case of A. S. Eldridge" (R. 32). The husband, of course, under the community property laws of the State of Washington was acting for the community in the transaction and was representing and binding his wife's interests equally with his own, and the de-

fects in the transaction apply equally to the taxpayer in this case. This conclusion is equally true on plain principles of agency unaffected by community property laws. Thus, in the case of *Slayton v. Commissioner*, 76 F. (2d) 497 (C. C. A. 1st), the court said (p. 499):

Mrs. Slayton knew little about the business of the Hoyt Shoe Company except as she was told by her husband. Her transfer of the stock was at his suggestion and from her testimony he clearly acted as her agent in arranging for the transfer of the shares.

In view of the stipulation and in view of the above principles we deem further discussion of the legal principles involved in this case to be unnecessary. We respectfully submit this case on the argument contained in the brief in the A. S. Eldridge case and to abide by the results in that case in accordance with the stipulation herein.

Respectfully submitted.

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Assistant Attorney General.

SEWALL KEY,

LUCIUS A. BUCK,

Special Assistants to the Attorney General.

AUGUST 1935.